



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

DE-9J

SEP 27 2001

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Byron Green, Plant Manager
Toledo Assembly Plant #1
DaimlerChrysler Corporation
1000 Jeep Parkway
Toledo, Ohio 43657

Re: Administrative Complaint and Compliance Order
DaimlerChrysler Toledo Assembly Plant #1
EPA ID No.: OHD 048 784 862

RCRA-05- 2001-0015

Dear Mr. Green:

Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which specifies the United States Environmental Protection Agency's (U.S. EPA's) determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 et seq., by DaimlerChrysler. U.S. EPA based its determination on the April 5, 2001, inspection of the facility located at 1000 Jeep Parkway, Toledo, Ohio, and your U.S. EPA files. The general allegations in the Complaint state the reasons for U.S. EPA's determination.

Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days of the receipt of this Complaint. You must file the request for hearing with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your request to Karen L. Peaceman, Office of Regional Counsel (C-14J), at the above address.

Regardless of whether DaimlerChrysler chooses to request a hearing within the prescribed time limit following the filing of this Complaint, U.S. EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with U.S. EPA guidance on pollution

prevention and supplemental environmental projects. A request for an informal settlement conference with U.S. EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with Waste, Pesticides and Toxics Division staff, please contact Duncan Campbell, United States Environmental Protection Agency, RCRA Enforcement and Compliance Assurance Branch (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604. He may also be reached at (312) 886-4555.

Sincerely yours,

Joseph M. Boyle
Joseph M Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division

Enclosure

cc: W. Charles Moser, DaimlerChrysler, Auburn Hills, MI
Kathleen M. Hennessey, DaimlerChrysler, Auburn Hills, MI



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

SEP 27 2001

DE-9J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CT Corporation Systems
1300 East 9th Street
Cleveland, Ohio 44114

Re: Administrative Complaint and Compliance Order
DaimlerChrysler Toledo Assembly Plant #1
EPA ID No.: OHD 048 784 862 **RCRA-05- 2001-0015**

Dear Registered Agent:

Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which specifies the United States Environmental Protection Agency's (U.S. EPA's) determination of violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 et seq., by DaimlerChrysler. U.S. EPA based its determination on the April 5, 2001, inspection of the facility located at 1000 Jeep Parkway, Toledo, Ohio, and the files of DaimlerChrysler and U.S. EPA. The general allegations in the Complaint state the reasons for U.S. EPA's determination.

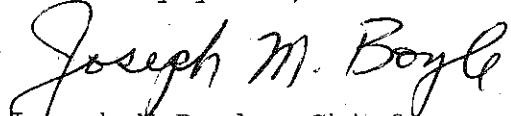
Accompanying this Complaint is a Notice of Opportunity for Hearing. Should DaimlerChrysler desire to contest the Complaint, it must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days of the receipt of this Complaint. DaimlerChrysler must file the request for hearing with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. DaimlerChrysler must also send a copy of its request to Karen L. Peaceman, Office of Regional Counsel (C-14J), at the above address.

Regardless of whether DaimlerChrysler chooses to request a hearing within the prescribed time limit following the filing of this Complaint, U.S. EPA extends to DaimlerChrysler the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with U.S. EPA guidance on pollution prevention and supplemental environmental projects. A

request for an informal settlement conference with U.S. EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If DaimlerChrysler has any questions or wants to request an informal settlement conference with Waste, Pesticides and Toxics Division staff, please contact Duncan Campbell, United States Environmental Protection Agency, RCRA Enforcement and Compliance Assurance Branch (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604. He may also be reached at (312) 886-4555.

Sincerely yours,



Joseph M Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division

Enclosure

cc: Regional Hearing Clerk, R-19J (w/enclosure)
Harry Sarvis, CAS, OEPA (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) DOCKET NO. RCRA-05- 2001-0015
DaimlerChrysler Corporation)
Toledo Assembly Plant #1)
1000 Jeep Parkway)
Toledo, Ohio 43657)
U.S. EPA ID # OHD 048 784 862)
Respondent)

COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

Preliminary Statement and Jurisdiction

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to Sections 22.1(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6926(b) and 6928.

3. The Complainant is, by lawful delegation, the Chief, Enforcement and

Compliance Assurance Branch (ECAB), Waste, Pesticides and Toxics Division, Region 5,
United States Environmental Protection Agency (U.S. EPA).

4. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a State to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the State program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a State hazardous waste program in lieu of the federal government's RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989). The U.S. EPA granted Ohio final authorization to administer certain HSWA and additional RCRA requirements effective June 7, 1991, 56 Fed. Reg. 14203 (April 8, 1991) (corrected effective August 19, 1991 (56 Fed. Reg. 28088 (June 19, 1991)); September 25, 1995, 60 Fed. Reg. 38502 (July 27, 1995); and December 23, 1996, 61 Fed. Reg. 54950 (October 23, 1996). The U.S. EPA authorized Ohio regulations are codified at Ohio Administrative Code (OAC) Chapters 3745-49 through 69. See also 40 C.F.R. § 272.1800 *et seq.*

7. U.S. EPA has provided notice of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

General Allegations

8. The Respondent is DaimlerChrysler Corporation, which is and was at all times relevant to this Complaint a corporation incorporated under the laws of Delaware, and the owner and operator of a facility as defined by OAC 3745-50-10(78) and (79) and 40 C.F.R. § 260.10, located at 1000 Jeep Parkway, Toledo, Ohio 43657 (the "facility").

9. Respondent is a "person" as defined by OAC 3745-50-10(83), Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. §260.10.

10. At all times relevant to this Complaint, Respondent generated wastes at the facility which were solid wastes, as defined in OAC 3745-51-02 and 40 C.F.R. § 261.2.

11. Chrysler Corporation, the former owner or operator of the facility, submitted to U.S. EPA a Hazardous Waste Notification pursuant to Section 3010 of RCRA, 42 U.S.C. §6930, identifying the facility as a generator of hazardous waste on or before August 18, 1980. In 1998, DaimlerChrysler became the successor corporation and it subsequently submitted to Ohio EPA a Hazardous Waste Notification indicating a change of ownership of this facility on February 16, 1999.

12. As a result of its painting operations, Respondent accumulates hazardous waste in a tank system at the facility. Respondent uses purge solvent to remove paint waste and clean paint applicators to allow the use of new colors in its painting operations. The used paint-bearing purge solvent is a spent material because Respondent physically removes the paint from the paint applicators and does not use the paint-bearing purge solvent to clean the paint applicators a

second time. The used paint-bearing purge solvent has a high total organic concentration and is ignitable; the used spent paint-bearing purge solvent is a characteristic hazardous waste.

13. The waste (the used paint-bearing purge solvent) removed from the paint applicators is conveyed through the "solvent recovery system" to the hazardous waste tanks; the only purpose served by Respondent's solvent recovery system is to manage , i.e., convey the hazardous waste (the used paint-bearing purge solvent). As Respondent's solvent recovery system serves solely to manage the waste generated from the cleaning of the paint applicators and a portion of the delivery line, it is not part of the production process. Thus, all the equipment associated with the solvent recovery system (e.g., purge pot(s), mix tanks, piping, pumps, valves, connectors) and the hazardous waste storage tanks, are subject to the hazardous waste requirements of RCRA.

14. Under Section 3005(a) of RCRA, 42 U.S.C. §6925(a), the regulations at 40 C.F.R. Part 270, Ohio Revised Code Chapter 3734.02(E)(2) and OAC 3745-50-45, the treatment, storage, or disposal of hazardous waste by any person who has not applied for, or received a permit, or interim status, is prohibited.

15. Neither U.S. EPA nor the State of Ohio have issued a permit to Respondent to treat, store, or dispose of hazardous wastes.

16. Respondent does not have interim status for the treatment, storage, or disposal of hazardous wastes.

17. Pursuant to OAC 3745-50-45(C)(1) generators who accumulate hazardous waste on-site and who comply with the provisions in rule 3745-52-34 of the Ohio Administrative Code are not required to obtain a hazardous waste permit.

18. Under OAC 3745-52-34 and 40 C.F.R. §262.34, generators of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or having interim status, provided that the generator complies with the applicable provisions of OAC 3745-52-34 and 40 C.F.R. § 262.34.

19. Effective December 6, 1996, generators could accumulate hazardous waste on-site for 90 days or less without a permit and without having interim status provided that, among other things, the waste was placed in tanks and the generator complied with the applicable provisions of OAC 3745-66-90 to 3745-66-96 and 40 C.F.R. §262.34, including and 40 C.F.R. Part 265, Subparts J (§§ 265.190-265.202), BB (§§ 265.1050-265.1064) and CC (§§ 265.1080-265.1091).

20. Prior to January 21, 1999, 40 C.F.R. §262.34(a)(1)(ii) a generator could accumulate hazardous waste on-site for 90 days or less without a permit and without having interim status provided that, among other things, the waste was placed in tanks and the generator complied with OAC 3745-66-90 to 3745-66-96 and Subpart J (§§ 265.190-265.202). Pursuant to 40 C.F.R. § 265.202, the owner or operator shall manage all hazardous waste placed in a tank in accordance with, among other things, the applicable requirements of 40 C.F.R. Part 265, Subpart BB (§§ 265.1050-265.1064) and Subpart CC (§§ 265.1080-265.1091).

21. On January 21, 1999, U.S. EPA amended 40 C.F.R. § 262.34 so that the requirement that a generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart BB (§§ 265.1050-1064) and CC (§§265.1080-1090) if it is to be exempt from the permit requirements is now found directly in 40 C.F.R. § 262.34(a)(1)(ii).

22. U.S. EPA has not authorized the State of Ohio, under RCRA Section 3006(g), to administer its hazardous waste regulations in-lieu of the Federal regulations for all exemptions of

40 C.F.R. § 262.34(a)(1)(ii) , including those exemptions which require compliance with the applicable requirements of 40 C.F.R. Part 265, Subpart BB and CC.

23. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g) , U.S. EPA has jurisdiction to carry out directly those portions of the HSWA requirements for which a State is not authorized. Thus, U.S. EPA has jurisdiction to administer directly in Ohio, those portions of 40 C.F.R. § 262.34(a)(1)(ii) for which the State of Ohio has not been authorized including the HSWA requirements of 40 C.F.R. Part 265 Subparts BB and CC.

24. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), requirements imposed pursuant to HSWA take effect immediately in all States.

25. Any installation storing hazardous waste without a permit or interim status that fails to fully comply with the applicable provisions of OAC 3745-52-34 and 40 C.F.R. 262.34 is storing hazardous waste in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and Chapter 3734.02(E)(2) of the Ohio Revised Code.

26. On April 5, 2001, U.S. EPA conducted a RCRA compliance evaluation inspection and records review at the facility.

COUNT 1: Storage of Hazardous Waste Without a Permit or Interim Status By Failing to Meet the Design and Installation Requirements for a New Tank System or Failing to Meet the Secondary Containment Requirements for Generators Storing Hazardous Waste in a Tank System

27. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

28. Pursuant to OAC 3745-52-34, a generator may, without a permit or interim status, accumulate hazardous waste for 90 days or less provided the generator, among other things, complies with OAC 3745-66-90 through 3745-66-96.

29. Pursuant to OAC 3745-66-92(A) owners or operators of new tank systems and

components must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with OAC 3745-50-42(D) attesting that the system has sufficient structural integrity and is acceptable for the storing of hazardous waste.

30. Pursuant to OAC 3745-50-10(A)(71) "new tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of paragraph (G)(2) of rule 3745-55-93 and paragraph (G)(2) of rule 3745-66-93 of the Administrative Code, a new tank system is one for which construction commenced after July 14, 1986.

31. Respondent installed and/or commenced construction of a new tank system and new tank components after July 14, 1986. The new tank system includes: two 3,000 gallon hazardous waste storage tanks, and ancillary equipment which includes: two re-circulation loops; two solvent recovery day tanks; two lift stations; and a discharge line which leads to a pump out box.

32. At the time of the inspection, Respondent could not produce a written assessment of that new tank system that had been reviewed and certified by an independent, qualified, registered professional engineer.

33. Respondent's failure to have a written assessment reviewed and certified by an independent, qualified, registered professional engineer constitutes a violation of OAC 3745-66-92(A).

34. Pursuant to OAC 3745-66-92(D) all new tanks and ancillary equipment must be tested for tightness prior to being covered or placed in use.

35. At the time of the inspection, Respondent could not demonstrate that a tightness test had been conducted prior to the new tank system being used.

36. Respondent's failure to have conducted the tightness test prior to using the tank system constitutes a violation of OAC 3745-66-92(D).

37. Respondent did not meet the requirements of OAC 3745-66-92; therefore Respondent did not satisfy the conditions of OAC 3745-52-34 necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and Chapter 3745.02(E)(2) of the Ohio Revised Code.

38. Pursuant to OAC 3745-66-93(A)(1), an owner or operator must provide secondary containment that meets the requirements of OAC 3745-66-93(B) for all new tank systems, prior

to their being put into service.

39. Pursuant to OAC 3745-66-93(B), secondary containment must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system at any time during the use of the tank system; and capable of collecting releases and accumulating liquids until the collected material can be removed.

40. OAC 3745-66-93(C) provides that to meet the requirements of OAC 3745-66-93(B), secondary containment must be at a minimum: constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient thickness to prevent failure due to physical contact with the waste to which they are exposed, and the stress of daily operation, including the stress from nearby vehicular traffic; sloped or otherwise designed and operated to drain and remove all liquids resulting from leaks or spills.

41. Pursuant to OAC 3745-66-93(F) ancillary equipment must be provided with full secondary containment that meets the requirements of OAC 3745-66-93(B) and (C) except for the following pieces of equipment that are visually inspected for leaks on a daily basis: aboveground piping (exclusive of flanges, joints, valves, and connections); welded flanges, welded joints, and welded connections; sealess or magnetic coupling pumps and sealess valves; and pressurized aboveground piping systems with automatic shut-off devices.

42. Respondent failed to have a secondary containment system in place for the ancillary equipment prior to putting the new tank system in place which constitutes a violation of OAC 3745-66-93(F).

43. At the time of the inspection, Respondent could not demonstrate that it had designed, installed, or operated a secondary containment system for the ancillary equipment which would prevent any migration of accumulated liquid out of the system and would be capable of collecting releases and accumulating liquids until the collected material can be removed.

44. At the time of the inspection, Respondent could not demonstrate that it had designed, installed, or operated a secondary containment system below the ancillary equipment that was lined with materials that are compatible with the waste, nor of sufficient thickness to prevent failure due to physical contact with the waste or the stress of operating daily.

45. Respondent's failure to design a secondary containment system to prevent the migration of any accumulated liquid out of the tank system while it was in use constitutes a violation of OAC 3745-66-93(B).

46. Respondent's failure to construct, or line a secondary containment for the tank system with materials that are compatible with the wastes it generates constitutes a violation of OAC 3745-66-93(C).

47. Respondent did not meet the requirements of OAC 3745-66-92 and OAC 3745-66-93; therefore Respondent did not satisfy the conditions of OAC 3745-52-34 necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and Chapter 3734.02(E)(2) of the Ohio Revised Code.

COUNT 2: Storage of Hazardous Waste Without a Permit By Failing to Meet the Daily Inspection Requirements for Generators who Store Hazardous Waste in Tanks

48. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

49. Pursuant to OAC 3745-66-95(A) the owner or operator must inspect, at least each operating day: overfill/spill control equipment; the aboveground portion of the tank system; the construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures to detect releases of hazardous waste.

50. At the time of the inspection, Respondent was not inspecting the tank system each operating day.

51. Respondent's failure to inspect the tank system each operating day constitutes a violation of OAC 3745-66-95.

52. Pursuant to OAC 3745-66-95(c) owners and operators must document in the operating record each daily inspection of overfill/spill control equipment, the above ground portions of the tank system, the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including secondary containment structures.

53. At the time of the inspection, Respondent was not documenting in the operating record each daily inspection of the tank system components.

54. Respondent's failure to document inspections in the operating record constitutes a violation of OAC 3745-66-95(C).

55. Respondent did not meet the requirements of OAC 3745-66-95; therefore Respondent did not satisfy the conditions of OAC 3745-52-34 necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and Chapter 3734.02(E)(2) of the Ohio Revised Code.

COUNT 3: Storage of Hazardous Waste Without a Permit By Failing to Implement Air Emission Standards for Equipment Leaks by Failing to Mark Equipment as Required by 40 C.F.R. § 265.1050(c)

56. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

57. Pursuant to 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.202, a generator of hazardous waste may accumulate hazardous waste on-site in tanks for 90 days or less without a permit provided that, among other things, the generator manages all hazardous waste placed in a tank in accordance with the applicable requirements of 40 C.F.R. Subpart BB (§§ 265.1050 through 265.1064).

58. Pursuant to 40 C.F.R. §265.1050(c) the owner or operator shall mark each piece of equipment to which Subpart BB applies in such a manner that it can be distinguished readily from other pieces of equipment.

59. At the time of the inspection, Respondent had not marked all pieces of equipment for which Subpart BB applies; specifically Respondent had not marked the purge pots, delivery line, pumps associated with the mix tanks, the lift stations, all connectors contained within the delivery lines, and any valves up until the waste enters the storage tanks.

60. Respondent's failure to mark equipment that is subject to Subpart BB constitutes a violation of 40 C.F.R. §265.1050(c).

61. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart BB; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations found at 40 C.F.R. § 270.1(c).

COUNT 4: Storage of Hazardous Waste Without a Permit By Failing to Implement Air Emission Standards for Equipment Leaks by Failing to Monitor Equipment as Required by 40 C.F.R. § 265.1052

62. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

63. 40 C.F.R. §265.1052(a)(1) requires that each pump in light liquid service be monitored monthly to detect leaks by methods specified in §265.1063(b).

64. 40 C.F.R. §265.1057(a) requires that each valve in light liquid service be

monitored monthly to detect leaks by methods specified in §265.1063(b) and comply with paragraphs (b) through (e) of 40 C.F.R. §265.1057.

65. Pursuant to 40 C.F.R. §264.1031, in "light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees Celsius, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 degrees Celsius is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

66. The two 3,000 gallon storage tanks, the two re-circulation loops, the two solvent recovery day tanks, the two lift stations, and the discharge line which leads to the pump out box contain purge solvent containing 20-50% xylene waste with a vapor pressure in excess of 0.3 kPa.

67. From July 2000 until the time of the inspection, April 5, 2001, Respondent had not monitored all pumps and valves associated with the two 3,000 gallon storage tanks, the two re-circulation loops, the two solvent recovery day tanks, the two lift stations, and the discharge line which leads to the pump out box.

68. Respondent's failure to monitor pumps on a monthly basis constitutes a violation of 40 C.F.R. §265.1052(a)(1).

69. Pursuant to 40 C.F.R. §265.1052(c)(4) each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

70. From July 2000 until the time of the inspection, Respondent had not conducted visual inspection of each pump on a weekly basis.

71. Respondent's failure to conduct visual weekly inspections of each pump constitutes a violation of 40 C.F.R. §265.1052(c)(4).

72. Pursuant to 40 C.F.R. §265.1057(a) each valve in light liquid service shall be monitored monthly to detect leaks.

73. At the time of the inspection, Respondent did not have a monitoring program in place for valves associated with the waste delivery system.

74. Respondent's failure to monitor each valve located with the waste delivery system at the specified frequency constitutes a violation of 40 C.F.R. §265.1057(a).

75. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart BB; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to

exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations found at 40 C.F.R. § 270.1(c).

COUNT 5: Storage of Hazardous Waste Without a Permit By Failing to Implement Air Emission Standards for Equipment Leaks by Failing to Meet the Recordkeeping Requirements in 40 C.F.R. § 265.1064

76. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

77. Pursuant to 40 C.F.R. §265.1064(b) owners and operators must record the following information in an operating record: equipment identification number, approximate location within the installation, type of equipment, percent-by-weight total organics, hazardous waste state at the equipment, and method of compliance with Subpart BB.

78. At the time of the inspection, Respondent had not recorded the required information about pumps, valves, and flanged connections in its operating record.

79. Respondent's failure to record information about pumps, valves and flanged connections constitutes a violation of 40 C.F.R. §265.1064(b).

80. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart BB; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations found at 40 C.F.R. § 270.1(c).

COUNT 6: Storage of Hazardous Waste Without a Permit By Failing to Meet Air Pollutant Emission Standards for Tanks by Failing to Performing Inspections of Tanks as Required by 40 C.F.R. § 265.1085(c)(4)

81. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

82. Pursuant to 40 C.F.R. §265.1085(c)(4) owners and operators shall visually perform an initial inspection of the fixed roof and closure devices on or before the date the tank becomes subject to Subpart CC.

83. Respondent's two 3,000 gallon hazardous waste storage tanks became subject to Subpart CC on or about July 2000.

84. Respondent could not demonstrate that it had visually performed an initial inspection of the fixed roof and closure devices on the two 3,000 hazardous waste storage tanks prior to July 2000.

85. Pursuant to 40 C.F.R. §265.1085(c)(4) owners and operators shall visually perform an inspection of the fixed roof and closure devices at least once each year after the date the tanks are subject to Subpart CC.

86. At the time of the inspection, Respondent could not demonstrate that it had conducted the annual update inspection required by 40 C.F.R. §265.1085(c)(4).

87. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart CC; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations found at 40 C.F.R. § 270.1(c).

COUNT 7: Storage of Hazardous Waste Without a Permit By Failing to Meet Air Pollutant Emission Standards for Tanks by Failing to Meet the Recordkeeping Requirements in 40 C.F.R. §265.1090(b)

88. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

89. Pursuant to 40 C.F.R. §265.1090(b) owners and operators of a tank using air emission controls in accordance with §265.1085 shall prepare and maintain records for the tank that include: a tank identification number; a record for each inspection; and prepare and maintain records for each determination for the maximum organic vapor pressure.

90. At the time of the inspection, Respondent could not demonstrate that it had prepared and maintained the required records of the initial inspection required by 40 C.F.R. §265.1085(c)(4).

91. At the time of the inspection, Respondent could not demonstrate that it had prepared and maintained the required records of the annual inspection required by 40 C.F.R. §265.1085(c)(4).

92. Respondent's failure to record information gained from conducting the inspections required by 40 C.F.R. §§265.1085(c)(4), constitutes a violation of 40 C.F.R. §§265.1085(c)(4) and 265.1090(b).

93. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart CC;

therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations found at 40 C.F.R. § 270.1(c).

II. PROPOSED CIVIL PENALTY

The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997.

The Complainant proposes, subject to the receipt and evaluation of further relevant information from Respondent, that the Administrator assess a civil penalty up to the statutory maximum as stated at RCRA §3008(a)(3) for the violations alleged in this Complaint, in accordance with U.S. EPA's 1990 Civil Penalty Policy. A copy of the penalty policy is available upon request.

III. COMPLIANCE ORDER

Based on the foregoing, Respondent is hereby ordered-- pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules-- to comply with the following requirements immediately upon the effective date of this Order:

1. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraphs 2 through 4 of this Compliance Order.

2. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by OAC 3745-52-34(A) and 3745-66-90 through 96 along with 40 C.F.R. Part 262.34(a)(ii) requiring compliance with Subpart BB and CC of 40 C.F.R. Part 265.

3. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order within 30 calendar days after the date it achieves compliance. If Respondent has not completed any requirement of this Order, Respondent shall notify U.S. EPA of the failure, its reasons for the failure, and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.

4. Respondent shall submit all reports, submissions, and notifications required by this Order the United States Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division, Enforcement and Compliance Assurance Branch, Attention: Duncan Campbell (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

IV. OPPORTUNITY TO REQUEST A HEARING

You have the right to request a hearing to contest any material fact in this Complaint, or to contest the amount of the proposed penalty, or both, as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22. A copy

of these rules accompanies this Complaint. To request a hearing, Respondent must specifically make the request in a written Answer to this Complaint. Respondent must file its written Answer with the Regional Hearing Clerk within 30 days of the date this Complaint is filed with the Regional Hearing Clerk. Consolidated Rules at § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. Consolidated Rules at § 22.7(a).

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. the facts Respondent intends to place at issue; and
3. whether Respondent requests a hearing.

Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material fact in the Complaint constitutes an admission of that allegation. Consolidated Rules at § 22.15.

Respondent must file its Answer with the Regional Hearing Clerk (R-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Answer and any subsequent documents filed in this action should be sent

to Karen L. Peaceman, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Karen Peaceman may be telephoned at (312) 353-5751.

If Respondent fails to file a timely written Answer to the Complaint, with or without a request for a hearing, the Regional Administrator or Presiding Officer may issue a Default Order pursuant to § 22.17 of the Consolidated Rules. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. Default will also result in the penalty proposed in the Complaint becoming due and payable by Respondent without further proceedings 30 days after issuance of a final order upon default under § 22.27© of the Consolidated Rules. In addition, default will preclude Respondent from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of Respondent in the Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*. The hearing will be in a location determined pursuant to § 22.21(d) of the Consolidated Rules.

V. SETTLEMENT CONFERENCE

Whether or not you as Respondent request a hearing, you may request an informal

conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, Respondent should write to Duncan Campbell, Enforcement and Compliance Assurance Branch (DE-9J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone him at (312) 886-4555.

Your request for an informal settlement conference does not extend the 30-day period during which you must submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Director, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of Respondent's right to request a hearing on any stipulated matter in the CAFO.

Dated this 27th day of September, 2001

Joseph M. Boyle
Complainant
Joseph M. Boyle, Chief
Enforcement and Compliance Assurance Branch

RCRA-05- 2001-0015

Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5

RCRA-05- 2001-0015

Complaint Docket No. _____

CASE NAME: DaimlerChrysler - Toledo Assembly Plant #1

DOCKET NO:

RCRA-05- 2001-0015

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Complaint and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

CT Corporation Systems
Registered Agent for
DaimlerChrysler Corporation
1300 East 9th Street
Cleveland, Ohio 44114

Certified Mail #7099 3400 0000 9586 1647

Byron Green, Plant Manager
DaimlerChrysler Corporation
Toledo Assembly Plant #1
1000 Jeep Parkway
Toledo, Ohio 43657

Certified Mail # 7099 3400 0000 9586 1616

Dated: 27 Sept 2001



Mary Ann Stephen

Secretary

Enforcement and Compliance Assurance Branch
United States Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 886-4435

Subpart B—Parties and Appearances

after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS**Subpart A—General****Sec. 22.1 Scope of this part.**

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer, and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service, and form of all filed documents; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 Ex parte discussion of proceedings.

22.9 Examination of documents filed.

civil penalties under the Clean Water Act.

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quick resolution; settlement; alternative dispute resolution.

22.19 Prehearing information exchange; pre-hearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation of the evidence standard; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.

22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.

22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7555(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended;

22.40 [Reserved.]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(e) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46 22-24 [Reserved.]

Subpart I—Administrative Proceedings Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 1381; 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(e), 6912, 6926, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General**Scope of this part.**

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136i(a);

(2) The assessment of any administrative civil penalty under sections 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 3609);

(3) The assessment of any administrative civil penalty under section 123(c);

(4) The issuance of any administrative civil penalty or for the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 123(c);

(5) The assessment of any administrative civil penalty under section 1447(b) of the Solid Waste Disposal Act, as amended (42 U.S.C. 1321(b)(6), and 1322(a);

(6) The assessment of any administrative civil penalty under section 1447(c) of the Toxic Substances Control Act (42 U.S.C. 2615(a) and 2647);

(7) The assessment of any administrative civil penalty under sections 109 of the Resource Conservation and Recovery Act.

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Clean Water Act, as amended (42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), and 300j-6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 123(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 13804).

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- (b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.
- (c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.
- [64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000]
- § 22.2 Use of number and gender.**
- As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.3 Definitions.

- (a) The following definitions apply to these Consolidated Rules of Practice:
- Act means the particular statute authorizing the proceeding at issue.
- Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(b).

Clerk of the Board means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a pen-

alty pursuant to sections 309(e)(4) and

section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Proceeding means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.4(b). Respondent means any person against whom the complainant states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000]

§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

- (a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.
- (2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions

section 3005(d) of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions

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§ 22.4 from the record, and denying any or all relief sought by the party in the proceeding.

- (b) *Regional Judicial Officer.* Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in law, or discretion; (7) Hear and decide questions of facts, or draw adverse inferences against that party;
- (6) Admit or exclude evidence;
- (7) Issue subpoenas authorized by the Act; and
- (10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.
- (d) *Disqualification, withdrawal, and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Judicial Officer, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may
- (2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Examine witnesses and receive documentary or other evidence;

any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

- (2) If the Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement from the Region where the case originated shall replace the Administrator. If that Regional Administrator shall be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.
- (3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

- § 22.5 Filing, service, and form of all filed documents; business confidentiality claims.**
- (a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic filing, subject

to any appropriate conditions and limitations.

- (2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.
- (3) A certificate of service shall accompany each document filed or served in the proceeding.
- (b) *Service of documents.* A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party.
- (1) *Service of complaint.* (1) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- (ii) (A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.
- (B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.
- (C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as

otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit or the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(4) Service of filed documents other than the complaint, rulings, orders, and decisions. All filed documents other than the complaint, rulings, orders, and decisions shall be served personally, by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), or by any reliable commercial delivery service. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic service, subject to any appropriate conditions and limitations.

(c) Form of documents. (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes

party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

§ 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board, the Office of Administrative Hearings Law Judges or the Regional Hearing Clerk, as appropriate.

(a) Computation. In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) Extensions of time. The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, or for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) Service by mail or commercial delivery service. Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing, or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.

§ 22.8 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

§ 22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances**§ 22.10 Appearances.**

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representatives must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention and non-party briefs.

(a) **Intervention.** Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or

the Environmental Appeals Board for good cause.

(b) **Non-party briefs.** Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

§ 22.12 Consolidation and severance.

(a) **Consolidation.** The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings subject to subpart I of this part. Where a proceeding subject to subdivisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) **Severance.** The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures**§ 22.13 Commencement of a proceeding.**

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneous with the commencement and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).

§ 22.14 Complaint.

(a) **Content of complaint.** Each complaint shall include:

- (1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;
- (2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;
- (3) A concise statement of the factual basis for each violation alleged;
- (4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) **Rules of practice.** A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) **Amendment of the complaint.** The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) **Withdrawal of the complaint.** The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

§ 22.15 Answer to the complaint.

(a) **General.** Where respondent: Contests any material fact upon which the complaint is based, contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate, or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed within 30 days after service of the complaint.

(b) **Contents of the answer.** The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for proposing any proposed relief; and whether a hearing is requested.

(c) **Request for a hearing.** A hearing upon the issues raised by the complaint and answer may be held if requested by the respondent in its answer. If the respondent does not request a hearing, the Presiding Officer or the Regional Hearing Clerk shall determine the date and time of the hearing.

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motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

§ 22.17 Default.

(a) *Default.* A party may be found to be in default, after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* Any penalty assessed in the default order shall be come due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Motions.

(a) *General.* Motions shall be served as provided by § 22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

(1) Be in writing;

(2) State the grounds therefor, with particularity;

(3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all

plaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any statutorily imposed civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any executed consent agreement, and waives any right to contest the proposed final order to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement to the proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Conclusion of proceeding.* No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without

a final order from the Regional Judicial Officer or Regional Administrator, or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(C) *Scope of resolution or settlement.* Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(D) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed

penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(1) *Prehearing information exchange; prehearing conference; other discovery.*

(a) *Prehearing information exchange.* (1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) *Each party's prehearing information exchange shall contain:*

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed

The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority

§ 22.20 under any applicable law to conduct investigations, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) *Failure to exchange information.* Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion:

- (1) Infer that the information would be diverse to the party failing to provide it;
- (2) Exclude the information from evidence; or
- (3) Issue a default order under § 22.17(c).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroversial, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) *Assignment of Presiding Officer.* When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded

oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the hearing of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.26 Findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to

the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

§ 22.26 Findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion To Reopen a Hearing

§ 22.27 Initial Decision.

(a) *Filing and content.* After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty

(b) *Disposition of motion to reopen a hearing.* Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

- (1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and
- (2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued, will be inadequate or ineffective.

(c) *Interlocutory review.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to

recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) **Notice of appeal.** (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.). One copy of any document filed with the Clerk of the Board shall also be served on the Regional Hearing Clerk. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants. The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within 20 days after the date on which the first notice of appeal was served.

(2) Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other

party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record, initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party, non-party participant, and the Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) **Review initiated by the Environmental Appeals Board.** Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Board, and serve it upon the Regional Hearing Clerk, the Presiding Officer and the parties within 45 days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) **Scope of appeal or review.** The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

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and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

Subpart G—Final Order

§ 22.31 Final order.

(a) **Effect of final order.** A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) **Effective date.** A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) **Payment of a civil penalty.** The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the pardee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the

check or other instrument of payment on the Regional Hearing Clerk and on the complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) **Other relief.** Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) **Final orders to Federal agencies on appeal.** (1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

(f) **Motion to reconsider a final order.** Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

§ 22.33 Subpart H—Supplemental Rules § 22.33 [Reserved]	§ 22.36 [Reserved] § 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act. <p>(a) Scope. This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 305(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6931b and 6991e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.</p> <p>(b) <i>Corrective action and compliance orders.</i> A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is issued, the respondent requests a hearing pursuant to § 22.15.</p>	§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act. <p>(a) Scope. This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act ("CWA") (33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.</p> <p>(b) <i>Consultation with States.</i> For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.</p> <p>(c) <i>Administrative procedure and judicial review.</i> Action of the Administrator for which review could have been obtained under section 509(b)(1) of the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>	<p>(d) <i>Scope.</i> This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.</p> <p>(e) <i>Collection of civil penalty.</i> Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.</p>
§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act. <p>(a) Scope. This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7433(d), 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.</p> <p>(b) <i>Issuance of notice.</i> Prior to the issuance of a final order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement.</p>	<p>(f) <i>Choice of forum.</i> A complaint which specifies that subparagraph I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 1414(e)(3)(B) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.</p> <p>(g) <i>Payment of civil penalty.</i> Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.</p>	<p>(h) <i>Administrative procedure and judicial review.</i> Action of the Administrator for which review could have been obtained under section 509(b)(1) of the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>	<p>(i) <i>Administrative procedure and judicial review.</i> Action of the Administrator for which review could have been obtained under section 509(b)(1) of the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>
§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act. <p>(a) Scope. This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.</p> <p>(b) <i>Venue.</i> The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>	<p>(j) <i>Administrative procedure and judicial review.</i> Action of the Administrator for which review could have been obtained under section 509(b)(1) of the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>	<p>(k) <i>Administrative procedure and judicial review.</i> Action of the Administrator for which review could have been obtained under section 509(b)(1) of the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>	<p>(l) <i>Administrative procedure and judicial review.</i> Action of the Administrator for which review could have been obtained under section 509(b)(1) of the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.</p>

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as necessary, and notify the parties of the changes.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) **Scope.** This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) **Effective date of final penalty order.** Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) **Public notice of final penalty order.**

Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the Safe Drinking Water Act by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order; (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained; (3) The location of the facility where violations were found;

(4) A description of the violations; (5) The penalty that was assessed; and

(6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

(a) **Scope of this subpart.** The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative

proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

(4) The Presiding Officer shall admit

into evidence the contents of the Ad-

ministrative Record described in § 124.9

of this chapter, and any public com-

mments received.

[65 FR 30804, May 15, 2000]

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 300(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) **Scope.** This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 300(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) **Public notice.**—(1) General. Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.18(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of the evidence to be presented, and the identity of any witness

(and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) **Limitations.** A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) **Quick resolution and settlement.** No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under § 22.18, or commenced under § 22.18(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) **Petition to set aside a consent agreement and proposed final order.** (1) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(2) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties or its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness

(v) A comment may present written comments for the record at any time prior to the close of the record.

